

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KARL O’BRATH,	:	APPEAL NO. C-110150
and	:	TRIAL NOS. 10CV-31683
		10CV-30189
LILIA O’BRATH,	:	
Plaintiffs-Appellees,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
HOWARD KONICOV,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op.3(A); App.R.11.1(E); Loc.R.11.1.1.

Defendant-appellant Howard Konicov appeals the judgment of the Hamilton County Municipal Court granting a writ of restitution to plaintiffs-appellees Karl and Lilia O’Brath in an eviction action. Konicov filed a counterclaim for retaliation, which remains pending in the municipal court. See *Cuyahoga Metropolitan Housing Authority v. Jackson* (1981), 67 Ohio St.2d 129, 132, 423 N.E.2d 177 (holding “that a judgment entry giving or denying a present right to possession of property under R.C. Chapter 1923, is appealable even though all the causes of action have not been adjudicated”).

OHIO FIRST DISTRICT COURT OF APPEALS

In his first and second assignments of error, Konicov argues that the trial court erred in granting summary judgment to the O’Braths on the eviction action and issuing them a writ for restitution of the premises because (1) “there was a genuine issue of material fact as to the terms of the rental agreement” and (2) the trial court erred “by allowing the [O’Braths] to evict [him] during the pendency of [his] retaliation claim against [them].”

But because the trial court denied Konicov’s request for a stay of execution of the writ of restitution and Konicov concedes that he has voluntarily vacated the premises, “this court can grant no relief” to Konicov in this appeal. See *Schwabb v. Lattimore*, 166 Ohio App.3d 12, 2006-Ohio-1372, 848 N.E.2d 912, ¶11. As a result, “[a]ny decision regarding the trial court’s proceedings would be purely advisory in nature.” *Id.*; see, also, *Mountaineer Investments, LLC v. Performance Home Buyers, LLC*, 2nd Dist. No. 24173, 2011-Ohio-3614, ¶9-14; *Valente v. Johnson*, 4th Dist. Nos. 06CA31 & 06CA38, 2007-Ohio-2664, ¶19-22; *Blosser v. Bowman* (May 1, 2001), 10th Dist. No. 00AP-1140; *Witkowski v. Arditi* (1997), 123 Ohio App.3d 26, 30, 702 N.E.2d 1231. We, therefore, dismiss Konicov’s appeal from the writ of restitution as moot.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 10, 2011

per order of the Court _____.
Presiding Judge